

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:17 cv 1**

BRYAN CURRY, et al., on behalf of)
themselves and all others similarly)
situated,)
)
 Plaintiffs,)
)
 v.)
)
SCHLETTER INC.,)
)
 Defendant.)

)

ORDER

This matter is before the Court sua sponte. In Plaintiffs’ Amended Complaint [# 23], Plaintiffs’ first cause of action is based on negligence. In Defendant’s Motion to Dismiss [# 24], Defendant states that North Carolina’s economic loss rule bars Plaintiffs from recovery. Plaintiffs’ response [# 26] and Defendant’s reply [# 27] addressed only the issue of the economic loss rule’s applicability.

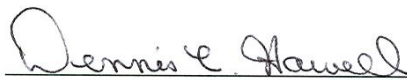
The parties did not, however, brief the issue of whether Plaintiffs’ negligence claim itself withstands Fed. R. Civ. P. 12(b)(6). The Court requests such briefing in making its memorandum and recommendation to the District Court. The Court in particular asks the parties to brief the element of duty.

Therefore, the Court **DIRECTS** the parties to brief the issue of whether Plaintiffs’ negligence claim survives Fed. R. Civ. P. 12(b)(6). Briefs shall be no

longer than ten (10) pages. Defendant's brief is due on or by **February 12, 2018**.

Plaintiffs' reply shall be due one (1) week from when Defendant files its brief.

Signed: January 31, 2018

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Dennis L. Howell
United States Magistrate Judge

